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In The

Supreme Court of the United States

October Term, 1990

NOR-WEST CABLE COMMUNICATIONS PARTNERSHIP,

Petitioner,

vs.

CITY OF ST. PAUL and CONTINENTAL CABLEVISION OF ST. PAUL, INC.,

Respondents.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the District Court properly ruled that petitioner lacked standing to pursue its alleged constitutional claims based upon the jury's special verdict findings and its own review of the record.

2. Whether the Eighth Circuit used the appropriate standard in reviewing the credibility determinations made by the jury's special verdict findings.

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BRIEF IN OPPOSITION

Respondent City of St. Paul ("City") respectfully requests this Court deny the Petition of Nor-West Cable Communications Partnership ("Nor-West") for a Writ of Certiorari seeking review of the decision of the United States Court of Appeals for the Eighth Circuit in this case.[1] Nor-West's Petition largely ignores the fact there was a trial, at the conclusion of which the jury and the District Court found that Nor-West lacked the ability and intent to design, build or operate a second, competitive cable system in St. Paul. On the basis of these inherently credibility-laden findings, the District Court held that Nor-West lacked standing to bring its claims challenging the City's refusal to issue a second franchise. The Eighth Circuit properly affirmed, and no reason exists for further review.

STATEMENT OF THE CASE[2]

The only proposal which Nor-West ever submitted to the City to provide cable television service was for a

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[1] The opinion and judgment of the Eighth Circuit is reported at 924 F.2d 741 (1991) (*"Nor-West III"*) and is printed in the appendix to the Petition at Appendix 1 ("Pet. App."). The District Court's Order of February 27, 1989, (*"Nor-West II"*) is printed at Pet. App. 39. The District Court's Order for Judgment, dated September 1, 1988, (*"Nor-West I"*) is printed at Pet. App. 27.

[2] The Petition contains a number of factual misstatements, most of which relate to issues other than standing – the only issue which can be presented for review given the disposition

(Continued on following page)

single, non-exclusive franchise. *Nor-West III*, Pet. App. 2; Tr. 219[3]. The City's ultimate award of that single, non-exclusive franchise to Continental Cablevision of St. Paul, Inc. ("Continental") in 1983 was later affirmed by the Minnesota Cable Communications Board and the Minnesota Supreme Court. *Nor-West III*, Pet. App. 2-3; *see Cable Communications Board v. Nor-West Cable Communications Partnership*, 356 N.W.2d 658 (Minn. 1984).

Nor-West's proposal to the City, including its financial projections, specifically assumed that Nor-West would be the sole franchisee. Tr. 131, 167, 169-70, 447-52, 705, 717, 797, 2069, 2205-07, 2339-42, 3542. In fact, Nor-West's bank would not have funded construction of Nor-West's system had the City issued multiple franchises. Tr. 2535, 2538. This financing commitment for the single, non-exclusive franchise lapsed in 1983. *Nor-West III*, Pet. App. 11.

On September 2, 1983, Nor-West filed the present lawsuit against the City alleging, *inter alia*, equal protection and first amendment violations and requesting a jury

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(Continued from previous page)

of Nor-West's claims below. The City will limit its discussion to those facts related to standing which were omitted from or stated inaccurately in the Petition.

[3] "Tr." refers to the page of the consecutively paginated trial transcript. References to other transcripts are designated by the date of the proceeding, followed by "Tr." and the relevant page number. "R." signifies the docket number of the relevant entry in the District Court record. "PX" signifies plaintiff's exhibits; "DX", defendant's exhibits.

trial.[4] It was only after filing this suit that Nor-West's counsel requested (by letter dated December 5, 1983) that the City award a second, competing franchise[5] to Nor-West. *Nor-West III*, Pet. App. 3; PX 516; Tr. 2069, 4187. The franchise terms were to be identical to those contained in the franchise issued by the City to Continental. *Id.*; Tr. 970-71. Prior to this request, Nor-West had undertaken no investigation into either the financial viability or technical feasibility of a second cable system in St. Paul. Tr. 219, 710, 725-26, 2532, 2538.

Nor-West's partners always intended to obtain bank financing for the construction and operation of Nor-West's system. Indeed, they never even discussed building a system without such financing. Tr. 2341, 2347, 2398-99. Although Nor-West now claims that its partners could have spent "all reasonably necessary amounts" with funds drawn from the partners' collective net worth

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[4] Although now Nor-West complains that it had to choose between litigation and "complying with an apparently unconstitutional monopoly franchising scheme" (Pet. at 3-4), Nor-West never challenged the constitutionality of the City's award of a single, non-exclusive franchise until after Nor-West was denied that franchise. *See Nor-West III*, Pet. App. 19-20. Nor-West's original complaint sought the invalidation of Continental's franchise and the issuance of the single franchise to itself. R. 1. This complaint was subsequently amended to challenge the City's refusal to grant a second franchise to Nor-West to operate a cable television system on the same terms and conditions as Continental. Amended Complaint, ¶ 40, R. 33.

[5] A second, competing franchise or "overbuild" means a franchise to build a cable system throughout the City to compete head-to-head with Continental's system for subscribers.

"of $76 million" (Pet. at 5)[6], this argument ignores Nor-West's own partners' testimony about their intent to finance construction and operation of a system with highly leveraged debt.

At no time did Nor-West obtain a financing commitment from any lender for a second, competitive cable system. *Nor-West III*, Pet. App. 11. The only nominal attempt made to secure a financing commitment for a competitive system was withdrawn and later frankly characterized by one of the partners as a "subterfuge". Tr. 154-57, 4166-68. In addition, there was uncontroverted expert testimony that Nor-West could not have obtained such debt financing even if Nor-West had a connection with a major cable company or if the partnership had substantial assets. *See Nor-West III*, Pet. App. 11.

Similarly, Nor-West never showed it could have obtained a commitment from anyone to build and operate a second, competitive system in St. Paul, even if Nor-West could have obtained the necessary financing commitments. Tr. 200, 473, 3546. For example, Henry Harris, an experienced operator of cable systems whose company had originally contracted with Nor-West to construct and operate a cable system, testified he would not have been interested in building and operating a second, competitive system. *Nor-West III*, Pet. App. 11. He indicated such a project would be "doomed to failure no matter how good a management you threw at me" and likened operation of a competitive system to being "lead pilot in a

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[6] As the Eighth Circuit accurately noted, Nor-West's partners' collective net worth was $31 million at the time of its request, not $76 million. *Nor-West III*, Pet. App. 11.

kamikaze plane." *Nor-West III*, Pet. App. 11-12 (quote from testimony at Tr. 4028).

Moreover, the evidence was overwhelming that there was insufficient demand to support a second cable system in St. Paul. *See Nor-West III*, Pet. App. 12; Tr. 337, 1870, 1925-26, 1957-58, 1963-64, 3664-66, 3674, 3768-69, 3836, 3889-90, 4005, 4011, 4761-62; DX 203C, 320. Nor-West's own financial projections showed it would have been insolvent by the second year of operation if it had attempted to build and operate a competitive system. Tr. 1661, 1663-65, 1667; DX 336. There was no evidence that operation of a second cable system in St. Paul would have been a profitable venture or that Nor-West's partners would have pursued it if it were not.

At no time did Nor-West ever submit another proposal as to what kind of system it would build if given the opportunity to compete in St. Paul. Nor-West's present and former partners offered inconsistent testimony at different times as to what Nor-West was willing and able to build. Depending upon when the question was asked and of whom, the answers varied – from the system originally proposed by Nor-West, to the system proposed by Continental, to no answer at all. Tr. 182-85, 192-93, 202, 484, 4131, 4135, 4138. Indeed, Nor-West's managing general partner testified that he did not have "the slightest idea" what had been proposed in Nor-West's request for the issuance of a second franchise. Tr. 726. Significantly, the systems described by Nor-West's expert witnesses were not based on anything which had been previously proposed to the City. Tr. 207, 1608-11.

After an eight-week trial, the District Court submitted Nor-West's first amendment and equal protection claims to the jury on special verdict questions. *Nor-West III*, Pet. App. 3. Nor-West had previously insisted that the jury verdict on all legal issues was binding on the District Court's determination of the equitable claims and that the court was bound by the jury's findings. *See Nor-West I*, Pet. App. 31-32. The jury found, *inter alia*, Nor-West was *not* ready, willing nor able to design, construct or operate a second, competitive cable system either at the time of its first request or at the time of trial.[7] *Nor-West III*, Pet. App. 3, 11-12; *Nor-West II*, Pet. App. 46; *Nor-West I*, Pet. App. 33. The jury also found that Nor-West was not damaged by the City's failure to award it a second cable franchise. *Nor-West III*, Pet. App. 3-4, 19-20; *Nor-West II*, Pet. App. 40, 45-46; *Nor-West I*, Pet. App. 33, 35-36.

The District Court adopted the jury's findings. The District Court noted that "even if . . . the court was not bound by . . . the jury verdict . . . and it was necessary to independently review the record, the court . . . did so by specifically choosing to adopt the findings of the jury . . . ". *Nor-West II*, Pet. App. 43. Nor-West's claim

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[7] Nor-West argues its standing was established by virtue of the City's admission in its Answer that Nor-West was a member "of a class of persons known as cable operators." This argument highlights the paucity of support for Nor-West's position. The admission is hardly tantamount to a concession that Nor-West was ready, willing and able to design, build and operate a *second*, competitive cable system in St. Paul at any point in time. Although reiterated throughout its Petition, this "admission" was mentioned by Nor-West only once – in its statement of the case – in its brief to the Eighth Circuit.

(Pet. at 16) that the District Court did not "independently review the record" is therefore incorrect.[8]

On the basis of these findings, the District Court held that, since Nor-West was unwilling and unable to build a competitive cable system, it lacked standing to bring its constitutional claims. *Nor-West III*, Pet. App. 4; *Nor-West II*, Pet. App. 40-45; *Nor-West I*, Pet. App. 34-38. The District Court further held that Nor-West had not suffered any damages, consistent with the jury's factual findings to that effect. Additionally, the District Court ruled that Nor-West was not entitled to recover its expenditures incurred in pursuit of the single, non-exclusive franchise because "unsuccessful bidders are not entitled to recover damages." *Id.* In a comprehensive order disposing of Nor-West's post-trial motions, the District Court noted it had conducted "a lengthy and thorough review of the record," had "painstakingly examined each of the plaintiff's points of contention" and was "satisfied that the parties received a fair trial and substantial justice has been done." *Nor-West II*, Pet. App. 41, 52.

The Eighth Circuit affirmed, ruling that the District Court had applied the correct standard of review and that its rulings were not clearly erroneous. *Nor-West III*, Pet. App. 8-10, 12-13. The Eighth Circuit held: "because Nor-West was not willing or financially able to compete with Continental, we find that Nor-West was not likely to

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[8] The Eighth Circuit also recognized that, even if the District Court was required to provide a *de novo* review, "it may be that the District Court engaged in such review." *Nor-West III*, Pet. App. 9, n. 3.

benefit from the grant of a second franchise in this case, and therefore lacked standing." *Id.* at 16.

SUMMARY OF REASONS FOR DENYING THE PETITION

Nor-West fails to identify the grounds under Rule 10 on which its Petition is premised. Nor-West does not argue that the Eighth Circuit's decision conflicts with any decisions of other courts of appeal or this Court. *See* Sup. Ct. R. 10.1(a) and (c). Nor does Nor-West seriously argue that the issue of standing is "an important question of federal law which has not been, but should be, settled by this Court." *See* Sup. Ct. R. 10.1(c). Rather, Nor-West argues that this Court should render an advisory opinion regarding the appropriate regulatory treatment of the medium of cable television for purposes of the first amendment, notwithstanding Nor-West's lack of standing to bring such claims.

The Petition should be denied because the Eighth Circuit's affirmance of the District Court's decision is fully in accord with well settled authority delineating the requirements of standing. Further, the Eighth Circuit's application of a "clearly erroneous" standard of review of the District Court's ruling on standing is consistent with this Court's decisions in first amendment cases. *See Bose Corporation v. Consumers Union of United States, Inc.*, 466 U.S. 485 (1984); *Harte-Hanks Communications, Inc. v. Connaughton*, 491 U.S. 657, 109 S.Ct. 2678, 2696 (1989).

ARGUMENT

1. The District Court's Ruling That Nor-West Lacks Standing To Challenge The City's Refusal To Issue A Second Franchise Does Not Present Any Novel Or Unsettled Question Of Law.

The only proper issue before this Court is whether any novel or unsettled question of law is presented by the District Court's ruling that Nor-West lacked standing to challenge the City's refusal to grant a second cable television franchise. *See* Sup. Ct. R. 10; *Fay v. Noia*, 372 U.S. 391, 436 (1963); *Rice v. Sioux City Memorial Park Cemetery, Inc.*, 349 U.S. 70, 74 (1955) (writ of certiorari on an equal protection claim dismissed as it was improvidently granted). As this Court has noted on other occasions: " . . . it is very important that we be consistent in not granting the writ of certiorari except in cases involving principles the settlement of which is of importance to the public as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the circuit courts of appeal." *Layne & Bowler Corp. v. Western Well Works, Inc.*, 261 U.S. 387, 393 (1923); *Rice*, 349 U.S. at 79. Neither the law of standing nor the District Court's application of that law to the facts of this case present such a unique question justifying this Court's granting of Nor-West's Petition.

Nor-West's statement that standing is an "illusive concept" which is "incapable of precise definition" both trivializes the standing requirement and is at odds with the very cases cited in the Petition. Standing is "not merely a troublesome hurdle to be overcome if possible so as to reach the 'merits' of a lawsuit which a party

desires to have adjudicated." *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 476 (1982). On the contrary, standing is an integral element of the Article III limitation on the jurisdiction of federal courts. *See Allen v. Wright*, 468 U.S. 737, 750-52 (1984); *Bender v. Williams Port Area School District*, 475 U.S. 534, 541 (1986).[9] *See also, Whitmore v. Arkansas*, 495 U.S. ___, ___, 110 S.Ct. 1717, 1726 (1990). Indeed, "a federal court is powerless to create its own jurisdiction by embellishing otherwise deficient allegations of standing." *Whitmore*, 495 U.S. at ___, 110 S.Ct. at 1723; *Warth v. Seldin*, 422 U.S. 490, 508, 518 (1975).

This Court has routinely stated that, at an "irreducible minimum", standing requires a showing that (1) an injury in fact occurred (*i.e.*, it is concrete both qualitatively and temporally; distinct and palpable; and not merely abstract, conjectural or hypothetical); (2) the injury can be "fairly traced to the challenged action"; and (3) the injury "is likely to be redressed by a favorable decision." *Valley Forge*, 454 U.S. at 472; *Whitmore*, 495 U.S. at ___, 110 S.Ct. 1713. Unless a claim satisfies each of these crucial elements, no standing will be found.

In this case, Nor-West's first amendment and equal protection claims challenged the City's decision not to award a second, competing franchise to Nor-West "to operate a cable television system . . . *on the same terms and conditions as Continental* . . . ". Amended Complaint, ¶ 40, R. 33 (emphasis added). Nor-West was given every

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[9] Furthermore, standing "must exist at all stages of the proceeding". *Safir v. Dole*, 718 F.2d 475, 481 (D.C. Cir. 1983), *cert. denied*, 467 U.S. 1206 (1984).

opportunity to offer credible evidence to support its claim that it had both the intent and ability to build and operate a second, competitive cable system in St. Paul. In the final analysis, Nor-West simply failed to persuade the jury or the District Court that it would or could have done so at any point in time.

Specifically, the jury found that Nor-West did not have the financial ability necessary to design, construct and operate the cable system which it requested permission to build (Special Verdict Finding Nos. 1, 5), was not capable of obtaining and providing the technical capability to design, construct and operate such a system (Special Verdict Finding Nos. 2, 6), and would not have built such a system given the opportunity (Special Verdict Finding Nos. 3, 7) – either in 1983 or at the time of trial. The jury's findings with respect to Nor-West's lack of intent and ability and the absence of any damage flowing from the City's refusal to grant a second franchise demonstrate that Nor-West did not suffer some actual or threatened injury as a result of the City's conduct.[10]

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[10] Although the jury found that Nor-West incurred $265,000 in expenses in seeking the single franchise originally issued by the City, those expenses were not recoverable. *See* Special Verdict Finding No. 10; *Nor-West I*, Pet. App. 29, 36; *Nor-West II*, Pet. App. 45-46. As the Eighth Circuit noted: "[i]f Nor-West does not request damages for the denial of a cable monopoly, Nor-West cannot now obtain damages on that basis. Accordingly, we find that Nor-West cannot recover money spent before it decided to compete with Continental instead of supplanting it as a cable monopolist." *Nor-West III*, Pet. App. 20.

Following an exhaustive and "painstaking" review of the record, the District Court adopted these findings and entered its order ruling that Nor-West lacked the necessary standing to pursue its claims. *Nor-West II*, Pet. App. 41, 45-46, 52; *Nor-West I*, Pet. App. 32, 35-38. After reviewing that same evidence, the Eighth Circuit concluded that the District Court's findings were not clearly erroneous. *Nor-West III*, Pet. App. 10-19. None of these rulings present any novel or unsettled questions for this Court to review.[11]

2. The Eighth Circuit's Application Of A "Clearly Erroneous" Standard Of Review Was Both Appropriate And Consistent With This Court's Rulings.

The Eighth Circuit correctly applied the "clearly erroneous" standard of review to the District Court's decision on the issue of standing, noting that "[a]s a rule, factual determinations relating to standing must be upheld on appeal unless they are clearly erroneous." *Nor-West III*,

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[11] The other rulings of the District Court and Eighth Circuit which Nor-West challenges in its Petition need not be addressed as they do not relate to the dispositive issue of standing. *See* Pet. at 21-25, 29-30. Nor-West unsuccessfully raised these same arguments before the District Court on its post-trial motions and the Eighth Circuit on appeal. Both courts properly rejected each of these arguments on grounds that they did not relate to the issue of standing. *See Nor-West III*, Pet. App. 20-22 (discovery orders), 22-23 (special verdicts and jury instructions), 24 (excluded expert testimony), 24-26 (exclusion of indemnity agreement and dismissal of Continental). *See also Nor-West II*, Pet. App. 44-45, 49 ("Many of the allegations of the plaintiff need not be addressed as they go to the substance of the plaintiff's case."), 50-52.

Pet. App. 9, *citing Pulido v. Bennett*, 848 F.2d 880, 888 (8th Cir. 1988), *rev'd on others grounds on rehearing*, 860 F.2d 296 (8th Cir. 1988); and *Hope, Inc. v. County of DuPage*, 738 F.2d 797, 803 (7th Cir. 1984) (applying "clearly erroneous" standard of review to standing determination in case involving fourteenth amendment claim). The Eighth Circuit rejected Nor-West's argument that *Bose* requires a *de novo* review on *all* issues arising in first amendment cases, including the procedural issue of standing:

> *Bose* and similar cases involve substantive determinations as to whether the plaintiff's speech is protected by the first amendment. By contrast, the district court's factual determinations in this case [*Nor-West I* and *II*] involve the procedural issue of standing. Accordingly, we hold that *Bose* is distinguishable and find that even in a first amendment case, factual determinations related to standing should be reviewed under the "clearly erroneous" standard.

Nor-West III, Pet. App. 10.[12]

In its Petition, Nor-West asks this Court to review the fact finder's credibility determinations *de novo*.[13] Such

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[12] Even in *Bose*, this Court emphasized that not every fact in a case raising constitutional issues is a "constitutional fact" requiring independent review. 466 U.S. at 514, n. 31; *see also The Bible Speaks v. Dovydenas*, 81 B.R. 750, 758 (D. Mass. 1988), *aff'd sub nom, In Re The Bible Speaks*, 869 F.2d 628 (1st Cir.), *cert. denied*, 110 S.Ct. 67 (1989).

[13] The only case relied upon by Nor-West in support of this proposition was decided two years before this Court's decision in *Harte-Hanks*. *See* Pet. 29, citing *Tavoulareas v. Piro*, 817 F.2d 762, 776-77 (D.C. Cir. *en banc* 1987), *cert. denied*, 484 U.S. 870 (1987).

independent review is not required of every facet of a constitutional action. In *Harte-Hanks* this Court expressly emphasized that appellate courts must leave undisturbed, unless clearly erroneous, the fact finder's determinations of credibility. 109 S.Ct. at 2696 and n. 35. Neither the jury nor the District Court decided the merits of Nor-West's first amendment claim. Rather, the jury's findings that Nor-West was not ready, willing and able to build or operate a second, competitive cable television system were based on a review of voluminous evidence introduced during the course of a lengthy trial. In arriving at its findings, the jury was required to make numerous credibility determinations, as was the District Court. Because these findings were not clearly erroneous, they should be left undisturbed. *See Harte-Hanks; Hope, Inc.*, 738 F.2d at 803.

3. This Court Should Summarily Reject Nor-West's Request For An Advisory Opinion On The Appropriate Scope Of Municipal Franchising Of Cable Television.

Nor-West urges this Court to "provide authoritative guidance in an area of continuing tension between" a municipality's power to franchise and the first amendment rights of cable operators generally. *Compare* Pet. 17 with Pet. 27-29. Unable to satisfy the requirement of standing, Nor-West asks this Court to issue an advisory opinion regarding the constitutional limits on municipal franchising of cable television.

Nor-West made a similar plea to the District Court, asking that the jury be instructed regarding what the City could require – before Nor-West was called upon to prove

what it was capable of and willing to do. This argument ignores the fact that Nor-West's challenge was limited to the City's refusal to issue a franchise "to operate a cable television system . . . on the same terms and conditions as Continental". Amended Complaint, ¶ 40, R. 33. No relief of any kind was sought regarding any of the franchise requirements. Indeed, Nor-West expressly disavowed any facial constitutional challenge to the franchise ordinance (*e.g.*, 8/14/86 Tr. 34-35).[14]

Nor-West's argument is both analytically contorted and beside the point. Taken to its logical conclusion, it would require courts to reach the merits of claims prior to determining whether or not the plaintiffs ever had standing to assert them. Such a result completely eviscerates the requirements of standing, reading Article III entirely out of the Constitution. It was incumbent upon Nor-West to prove what it proposed to build and operate in St. Paul and whether it could have done so. The jury found that Nor-West failed to meet this burden. As the Eighth Circuit observed: "[t]he question of what sort of system the City could have required Nor-West to build is not dispositive if, as the jury found, Nor-West did not intend to build a competitive cable television system and was

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[14] Nor-West is therefore estopped from altering its position at this juncture. *Cf. Total Petroleum, Inc. v. Davis*, 822 F.2d 734, 737 (8th Cir. 1987); *see also Murray v. Silverstein*, 882 F.2d 61, 66 (3d Cir. 1989); *Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 419 (3d Cir. 1988), *cert. denied*, 109 S.Ct. 495 (1988). Furthermore, even if it were not estopped from doing so, Nor-West cannot raise such a claim for the first time on appeal. *See Hall v. Gus Constr. Co., Inc.*, 842 F.2d 1010, 1017 (8th Cir. 1988).

unable to operate 'the cable television system it has requested permission to build'." *Nor-West III*, Pet. App. 21-22, quoting *Nor-West I*.

Nor-West now asks this Court for the advisory opinion that the District Court declined to issue. For over a century, this Court has rejected such requests. Succinctly stated:

> [this Court] is bound by two rules, to which it has rigidly adhered, one, never to anticipate a question of constitutional law in advance of the necessity of deciding it; the other never to formulate a rule of constitutional law broader than is required by the precise facts to which it is applied.

Liverpool, New York and Philadelphia S.S. Co. v. Commissioners of Emigration, 113 U.S. 33, 39, 5 S.Ct. 352, 355 (1885). This Court has consistently adhered to this principle of judicial restraint. *See Bowen v. Roy*, 476 U.S. 693, 724 (1986)("consistent with our long-standing principles of constitutional adjudication, we should decide nothing more than is actually necessary to dispose of the precise dispute before the Court, and nothing more than is fairly presented by the record and the factual findings.") (Stevens' concurring opinion); *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 804 (1985); *Valley Forge*, 454 U.S. at 474-75 ("in addition, even when the plaintiff has alleged redressable injury sufficient to meet the requirements of Art. III, the Court has refrained from adjudicating 'abstract questions of wide public significance' which amount to 'generalized grievances' ", quoting from *Warth*, 422 U.S. at 499-500); *Gladstone Realtors v. Village of Bellwood*, 441 U.S. 91, 99-100 (1979) ("the judiciary seeks to avoid deciding questions of broad social import where

no individual rights would be vindicated"); *Rescue Army v. Municipal Court of City of Los Angeles*, 331 U.S. 549, 569 (1947); *Coffman v. Breeze Corp.*, 323 U.S. 316, 324-25 (1945). Nor-West's invitation to ignore over a century of precedent against the issuance of advisory opinions should be summarily rejected.

CONCLUSION

For the foregoing reasons, the Petition should be denied.

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Respectfully submitted,

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